In the High Court of Punjab and Haryana at Chandigarh

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Civil Writ Petition No.543 of 2006

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Date of decision: 23.2.2007

Sukhwinder Singh

... Petitioner

v.

State of Punjab and others

... Respondents

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Coram Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Ranjan Lakhanpal, Advocate for the petitioner.

Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab for the respondents.

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The petitioner in this petition under Articles 226/227 of the Constitution of India has made the following substantive prayer:-

> "A writ of mandamus or any other writ, order or direction be issued directing the respondents to take immediate action against Navjot Singh DSP for brutally beating the petitioner with the further prayer that adequate protection be provided to the petitioner and that he may be compensated properly for his sufferings."

The case set up by the petitioner is that he is a Member of Zila

Parishad, Jalandhar. On 8.12.2005, he had gone to Phagwara along with Mr. Mohinder Singh K.P., Transport Minister, Punjab. The latter had gone there to inspect the new bus stand that was being built. After the Press Conference at Phagwara, the Minister left the premises. The petitioner was in his Safari car and he was about to start his vehicle, when the police officials told him that the D.S.P. wanted to see him. The petitioner came out of his car and waited for the D.S.P. Navjot Singh who came in his Jeep and parked it in front of the Safari car of the petitioner. It is alleged that the D.S.P. got down from his vehicle and started beating the petitioner with a rod. Persons who accompanied the D.S.P. including his gunmen Nasib Singh, Jagbir Singh, Gurmit Singh, Harwinder Singh, Sukhwinder Singh, driver Malkiat Singh and Param Sunil Singh In-charge of Police Post Chaheru also pounced upon the petitioner and started beating him. After the petitioner was beaten severely, he was picked up and thrown in the police vehicle and taken to the Police Station City Phagwara. There he was again beaten up with rods and lathis. Thereafter, he was taken to Civil Hospital, Phagwara where he was made to sign on blank-papers and then left there. He somehow reached Jalandhar and got himself admitted in the Civil Hospital Jalandhar and requested for his medical examination. The Hospital authorities at Jalandhar, however, told the petitioner that he had been beaten up by the police at Phagwara and they, therefore, had no jurisdiction to medically examine him as Phagwara falls in Kapurthala District. The petitioner then went to Phagwara in the morning i.e. on 9.12.2005 and got himself admitted in Civil Hospital, Phagwara. There he was medically examined and in terms of the medico legal report (Annexure-P.1), he

received as many as 34 injuries. The matter is also stated to have been reported in the Press. A copy of the newspaper report is annexed as Annexure-P.2. Prior to the said occurrence, the petitioner's uncle (i.e. father's sister's husband) (Fufar) was harassed by Param Sunil Singh In-charge Police Post Chaheru. The uncle of the petitioner was carrying Rs.4.00 Lacs in his vehicle as the same had to be paid by the petitioner for buying a Safari car from Chandigarh. Param Sunil Singh, In-charge, Police Post Chaheru demanded Rs.2.00 Lacs (approx.) from the petitioner's uncle and told him that he could leave if the said amount was paid which was to be shared with the D.S.P., Navjot Singh. The petitioner then approached Mr. Mohinder Singh K.P. and D.I.G., Jalandhar Range to intervene in the matter. In the meanwhile, the uncle of the petitioner was badly beaten up by Param Sunil Singh, In-charge, Police Post, Chaheru. However, due to the intervention of D.I.G., Jalandhar Range and Mr. Mohinder Singh K.P., Cabinet Minister, Punjab, the uncle of the petitioner was let off. It is further submitted that when the petitioner had gone to Phagwara with the Minister on 8.12.2005, he inquired from Param Sunil Singh, In-charge, Police Post, Chaheru about the incident in which his uncle was beaten up and it is because of the said reason that the petitioner was beaten by the policemen for getting his uncle released without paying the amount to the In-charge, Police Post, Chaheru and the D.S.P. Navjot Singh. When the petitioner was being badly beaten up by the police, the Press personnel, it is stated, were also there and they videographed the entire incident. A copy of the C.D. of the video film has been annexed with this petition as Annexure-P.3. It is further stated that the petitioner is being threatened by the D.S.P. that he

would be implicated in a false case. The petitioner has also filed a complaint (Annexure-P.4) before the Punjab State Human Rights Commission, Chandigarh. The matter is also stated to have been highlighted by the T.V. Channels. The petitioner has also alleged various kinds of threats being held out to him by the D.S.P. It is after the said incident that the D.S.P. has now been transferred to Jalandhar. Accordingly, a prayer has been made for issuing the directions as indicated above.

Notice of motion was issued in the case which was accepted by the learned Senior Deputy Advocate General, Punjab.

Reply by way of affidavit of Mr. Harbhajan Singh, PPS, Superintendent of Police (Headquarters), Kapurthala has been filed on behalf of respondents No.1 to 4. In respect of the incident alleged by the petitioner it is stated that a thorough on the spot inquiry was conducted by the Inspector General of Police, Jalandhar Zone, Jalandhar. A copy of his inquiry report has been placed on record as Annexure-R.1. It is stated that in compliance to the directions given by the Inspector General of Police, Jalandhar Zone, Jalandhar based on the findings of the inquiry and after obtaining the legal opinion, legal action has been taken by the Kapurthala police against the guilty police officials. This legal action includes presentation of a final police report after investigation for the offence under Section 323 of the Indian Penal Code (`IPC' – for short) read with Section 155 of the Code of Criminal Procedure (`Cr.P.C.' - for short). The challan has been filed in the Court of the learned Sub-Divisional Judicial Magistrate, Phagwara on 11.2.2006 against the Deputy Superintendent of Police Navjot Singh PPS, ASI Param Sunil Singh, ASI Ranjit Singh,

Constable Malkiat Singh 1568, Constable Amrik Singh 333 and Constable Sukhwinder Singh 582. Now the matter is sub judice. Besides, it is stated that departmental action has been initiated against Param Sunil Singh, ASI Ranjit Singh, Constable Malkiat Singh 1568, Constable Amrit Singh 333 and Constable Sukhwinder Singh 582. They have also been placed under suspension. The police officers have also been transferred out of Kapurthala District. In regard to providing of protection, it is submitted that as per report from the Police Station, the petitioner is involved in seven criminal cases, the details of which are as follows:-

> "1. Case F.I.R. No.30 dated 8.2.1999 u/s 61/1/14 Excise Act P.S. Lam,bra District Jalandhar-under Trial in Court.
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> 2. Case F.I.R. No.356 dated 5.7.2000 u/s 61/1/14 Excise Act P.S. Lambra, District Jalandhar-under Trial in Court.
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> 3. Case No.F.I.R. No.481 dated 31.8.2000 u/s 61/1/14 Excise Act P.S. Lambra, Jalandhar-under Trial in Court.
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> 4. Case F.I.R. No.61 dated 9.5.2002 u/s 186/353/332/ 148/149/506 I.P.C. P.S. Lambra, Jalandhar under reinvestigation.
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> 5. Case F.I.R. No.50 dated 29.4.2005 u/s 308/342/353/341 I.P.C. P.S. Lambra, District Jalandhar - under investigation.
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> 6. Case F.I.R. No.110 dated 17.7.2005 u/s 382/341/323/506/148/149 I.P.C. P.S. Lambra, District Jalandhar under investigation.
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> 7. Case F.I.R. No.300 dated 9.12.2005 u/s 353/186 I.P.C. P.S. City, Phagwara, District Kapurthala - under Trial in Court."

In the circumstances, it is submitted that the petitioner does not have any threat perception and in view of his past criminal background, the security cover if given to him can be misused by him. From another report obtained from the office of Senior Superintendent of Police, Jalandhar, it is submitted that the petitioner has arms licence in respect of the following arms:-

1. 315 Bore Rifle A.B. -04-4332.
2. 32 Bore Revolver A-9245.
3. 12 Bore D.B.B.L. Gun 24876-01.

Besides, this he is roaming about freely without any fear or threat as was also clear from the newspaper reports attached as Annexure R-2 to R-6. Therefore, providing of security cover to the petitioner at public expense it is stated would not be in public interest. The petitioner, it is admitted had gone to Phagwara on 8.12.2005 along with Mr. Mohinder Singh K.P., Transport Minister, Punjab. The rest of the version with regard to the happening at Phagwara is stated to be incorrect. It is submitted that the petitioner has given a distorted version of the incident after due deliberations and consultations. The Inspector General of Police, Jalandhar Zone, Jalandhar in fact has submitted a detailed report with regard to the incident which has been found correct after hearing both the parties. In fact, the petitioner had misbehaved with ASI Param Sunil Singh against whom he nursed a grudge. Besides, the petitioner is stated to have used unparliamentary language against the D.S.P. Navjot Singh and also against the media persons. It is the media personnel who sought the assistance of the DSP Navjot Singh so as to save themselves from the wrath of the

petitioner. It is also submitted that initially the petitioner himself voluntarily refused to get himself medically examined at Civil Hospital, Phagwara. Efforts of rapprochement between the Police and the petitioner were initiated after the incident by the Transport Minister. Therefore, the Police did not register a case under Sections 353, 186 I.P.C. against the petitioner nor the petitioner got himself medically examined. It is after the efforts of rapprochement did not materialize that the petitioner got himself medically examined at Civil Hospital, Phagwara on 9.12.2005. It is, however, denied that the petitioner remained admitted as an indoor patient at Civil Hospital Phagwara. The medico legal report dated 9.12.2005 from Civil Hospital Phagwara in respect of the petitioner is admitted. In substance it is submitted that in terms of the findings of the inquiry the petitioner had misbehaved with the Police personnel on duty including Navjot Singh, DSP, ASI Param Sunil Singh, a local journalist and other respectable persons present at the venue. Besides, he has given a distorted version of the incident. As regards the compact disc (C.D.) containing the videography, it is submitted, that the authenticity of the same has not yet been subjected to forensic examination. It is denied that the DSP was transferred to Jalandhar after the incident appeared in the electronic media. In fact he had been transferred to Jalandhar earlier and further to District Nawanshahr.

Mr. Ranjan Lakhanpal, Advocate learned counsel for the petitioner during the course of hearing has submitted that the petitioner was badly beaten by the Police and, therefore, the Police has not conducted a fair investigation. The matter, according to the learned counsel, requires to be

further probed so that truth of the actual incident as has been narrated by the petitioner is brought to light. It is, in any case, submitted that in view of the threats held out by the Police the petitioner requires adequate protection so as to safeguard his life and liberty.

In response Mrs. Charu Tuli, learned Senior Deputy Advocate General, Punjab appearing for the respondents submits that the matter has been properly and thoroughly investigated and police report (challan) in terms of 173 Cr.P.C. has been submitted in the Court of the learned Sub Divisional Judicial Magistrate, Phagwara against the Police officials who are prima facie liable for the offence. Therefore, it is submitted that the law would take its own course. In any case, it is submitted that the petitioner himself has been involved in various cases and, therefore, the possibility of his otherwise inflating the occurrence so as to put pressure on the Police officials in view of the pending cases against him cannot be ruled out. As regards the protection sought, it is submitted by Mrs. Tuli that she would write to the Senior Superintendent of Police, Kapurthala to ensure that the petitioner is not unnecessarily harassed by the Police and that his life and liberty is adequately protected.

We have given our thoughtful consideration to the matter. It is not in dispute that in respect of the occurrence alleged by the petitioner the matter was investigated and police report (challan) in terms of Section 173 Cr.P.C. has been filed in the Court of the learned Sub Divisional Judicial Magistrate, Phagwara. The provisions as contained under Chapter XII Cr.P.C. provide for a detailed procedure for conducting investigation in respect of an offence of which information is given. It is the domain of the

investigating authority for the formation of an opinion as to whether the accused who are alleged to have committed the offence are to be prosecuted or not. This Court seldom interferes in the course of investigation by the Police. Interference is generally where the investigating agency transgresses the circumscribed limits and improperly and illegally exercises its investigating powers. In the present case, as already noticed, the challan has already been filed. Therefore, the merits and demerits of the case are to be considered by the Court before whom the case is taken up for further progress. The learned Sub Divisional Judicial Magistrate before whom the challan has been filed while dealing with the matter is required to consider the question of framing charge by following the procedure provided under chapter XVII Cr.P.C. The grievance of the learned counsel for the petitioner, however, is that the challan has been filed only in respect of an offence under Section 323 I.P.C. This aspect, in fact, is also now to be considered by the trial Court which is seized of the case. It is needless to state that the trial Court while considering the matter would be in a position to consider all the material placed before it and would be in a position to dispose of the matter as the case may be. In case from the material on record and the circumstances of the case further investigation is required, the trial Court has the necessary powers in terms of Section 173 (8) Cr.P.C. for further investigation. Therefore, the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution or the inherent powers under Section 482 Cr.P.C., in the facts and circumstances of the present case, are not required to be exercised as there is already sufficient procedural remedy available with the petitioner. Moreover, the trial Court would be in a

position to consider all aspects on the basis of the charge-report (challan) that has been filed.

As regards the protection sought by the petitioner, Mrs. Charu Tuli, as already noticed, has submitted that she would write to the SSP, Kapurthala to take steps to ensure that the petitioner is not unnecessarily harassed by the Police in view of the pending litigation. We have no doubt that the Police would take adequate steps to protect the life and liberty of the petitioner which it is even otherwise to do so. Therefore, no directions are required to be issued in this regard also.

In the light of the above observations, the present petition is disposed of.

(S.S. Nijjar)
Judge

February 23, 2007.

(S.S. Saron)
Judge

seema/hsp